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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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| <b>2001 Senate Bill 375</b>  | <b>Senate Amendments 1 and 2</b> |
| <i>Memo published:</i> February 25, 2002 <i>Contact:</i> Joyce L. Kiel, Senior Staff Attorney (266-3137) |                                  |

2001 Senate Bill 375 relates to various changes in the insurance laws.

### Senate Amendment 1

Under *current law*, in order to avoid unnecessary expense, an agency that is promulgating an administrative rule may, *with the consent of the Revisor of Statutes (Revisor) and the Attorney General*, adopt standards established by technical societies and organizations of recognized national standing by incorporating the standards in its rules by reference to the specific issue or issues of the publication in which they appear, without reproducing the standards in full. The Revisor and the Attorney General must consent to incorporation by reference only in a rule of limited public interest and in a case where the incorporated standards are readily available in published form.

Under *current law*, each rule containing an incorporation by reference must state how the material incorporated may be obtained and that the standards are on file at the offices of: (1) the agency that promulgated the rule; (2) the Secretary of State; and (3) the Revisor. [s. 227.21 (2), Stats.]

In pertinent part, the *bill* provides that the Commissioner of Insurance (Commissioner) may adopt standards of the National Association of Insurance Commissioners (NAIC) by incorporating by reference in a rule any materials that are published, adopted, or approved by the NAIC, without reproducing the standards in full. The bill specifies that the consent of the Revisor and the Attorney General is *not* required. Further, the bill provides that the NAIC material incorporated by reference in a rule must be obtainable from, and is only required to be kept on file at, the Office of the Commissioner of Insurance (OCI). This fact must be stated in the rule containing such an incorporation by reference. [SECTION 5 of the bill.]

*Senate Amendment 1* to the bill provides that the NAIC standards that may be incorporated by reference in an administrative rule under the bill's provision described above do *not* include any model act or model regulations proposed or adopted by the NAIC.

In addition, the amendment specifies that the Commissioner may continue to incorporate NAIC standards by reference in a rule in the manner permitted under current law as described above, that is, with the consent of the Revisor and Attorney General and by keeping the standards on file at the offices of: (1) OCI; (2) the Secretary of State; and (3) the Revisor.

### **Senate Amendment 2**

**Current law** provides a formula to determine the minimum nonforfeiture amount for individual deferred fixed annuities on contracts delivered or issued for delivery in Wisconsin. (This formula does not apply to contracts for annuities providing variable benefits as opposed to fixed benefits [s. 632.45 (1), Stats.].) The minimum nonforfeiture amount is pertinent in various circumstances, for example, if a contract holder stops paying premiums or requests a cash surrender benefit if permitted by his or her contract. Also, the minimum values of a paid-up annuity, cash surrender benefits, or death benefits available under such an annuity contract are based on the minimum nonforfeiture amount and, typically, may not be less than the statutory minimum nonforfeiture amount. [See s. 632.435 (1) (a) and (b), (4) (intro.), (5) to (8), and (10), Stats.]

The statutes provide a formula for determining the minimum nonforfeiture amount for fixed annuities. In general, the minimum nonforfeiture amount at any time at, or prior to, the commencement of any annuity payment must be equal to:

The accumulation up to such time at a rate of interest of **3%** per year of  
certain percentages of the net considerations paid prior to that time

*minus*

The sum of any prior withdrawals from or partial surrenders of the  
contract accumulated at a rate of interest of **3%** per year and the amount of  
any indebtedness to the company on the contract, including interest due  
and accrued

*plus*

Any existing additional amounts credited by the company to the contract.

The applicable percentage of net considerations for a given contract year varies somewhat depending on whether the annuity premium payments were based on: (1) a single payment [s. 632.435 (4) (c), Stats.]; (2) a fixed schedule of payments [s. 632.435 (4) (b), Stats.]; or (3) a flexible schedule of payments [s. 632.435 (4) (a), Stats.].

**2001 Senate Bill 375** makes no changes to current law with respect to the minimum nonforfeiture amounts for fixed annuities.

**Senate Amendment 2** to the bill changes the interest rate per year of the various percentages of the net considerations paid in establishing the minimum nonforfeiture amount for individual fixed annuities. Under current law, the rate of interest is 3% per year. Under the amendment, the rate of interest would be 1.5% per year in the two highlighted places in the formula shown above.

The amendment provides that this change of interest rates applies to annuity contracts issued on or after the effective date of the bill.

Senate Bill 375 was introduced by Senator Breske; cosponsored by Representative Montgomery. It was referred to the Senate Committee on Insurance, Tourism, and Transportation. The committee introduced and adopted Senate Amendment 1 on a vote of Ayes, 5; Noes, 0; introduced and adopted Senate Amendment 2 on a vote of Ayes, 5; Noes, 0; and recommended passage of the bill, as amended, on a vote of Ayes, 5; Noes, 0.

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